

REMARKS/ARGUMENTS

Upon entry of this amendment, claims 12, 18 and 25 will be canceled without prejudice or disclaimer of the subject matter recited therein, and claims 7 and 15 will be amended, whereby claims 1, 3, 5, 7, 9, 13-15, 17, 19, 22, 24 and 26-28 will be pending. Claims 1, 7, 13, 14, 15 and 17 are independent claims.

In order that the record is clear, Applicants note that claims 26-28 were added in the Amendment Under 37 C.F.R. 1.114 filed December 5, 2006.

Applicants note that the amendment to claim 7 is supported by Applicants' originally filed application and therefore does not constitute new matter. For example, the Examiner's attention is directed to Applicants' originally filed specification at page 9, lines 4-5 and lines 17-18. Moreover, similar recitation is previously included in claim 7.

Claim 15 which is not rejected over prior art and only included in the obviousness-type double patenting rejection has been rewritten in independent form.

Reconsideration and allowance of the application are respectfully requested.

Response To Anticipation, Obviousness and Double Patenting Rejections

(a) Rejection of claims 12, 18 and 25 under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Pfeil et al., U.S. Patent No. 4,135,935, for the reasons of record.

In response, claims 12, 18 and 25 have been canceled without prejudice or disclaimer of the subject matter recited therein, and without expressing agreement or acquiescence with the rejection of record. Applicants preserve the right to present the canceled subject matter in one or more continuation and/or divisional applications, and to present arguments for patentability if the rejection is repeated.

In view of the cancellation of the rejected claims, this ground of rejection is moot, and the rejection should be withdrawn.

(b) Rejection of claims 7 and 9 are rejected under 35 U.S.C. 103(a) as obvious over Fujiu et al. (hereinafter "Fujiu"), U.S. Patent No. 4,708,652

Applicants note that claim 7 has been amended herein to recite a sintered calcium phosphate comprising a bioactive glass as a sintering aid, said bioactive glass formed from a composition substantially comprising 30 to 60 mol % of CaO, 40 to 70 mol % of SiO₂, 0.1-1 mol % of CaF₂, and at least one of Na₂O and B₂O₃, Na₂O being 20 mol % or less and B₂O₃ being 5 mol % or less, said sintered calcium phosphate being excellent in cell attachment, cell proliferation and alkaline phosphatase activity, wherein said sintered calcium phosphate is formed from a calcium

phosphate comprising a hydroxyapatite, a carbonated apatite or tricalcium phosphate.

Accordingly, claim 7 positively recites "0.1-1 mol % of CaF_2 ".

Accordingly, for the reasons set forth in Applicants' response filed December 5 2006, which for the sake of brevity are incorporated herein by reference as if set forth in full herein, Applicants submit that the subject matter recited in Applicants' claims 7 and 9 is not rendered obvious by Fujiu. For example, the rejection contends that claim 7 does not require CaF_2 , but this contention does not apply to the presently pending claim.

Thus, for all of the reasons of record, including the reason repeated herein, Applicants submit that the rejection is without sufficient basis and should be withdrawn with the allowance of claim 7 and claim 9 which is dependent therefrom.

(c) Rejection of claims 1-3, 5, 7, 9, 12-15, 17-19, 22 and 24-28 under the judicially created doctrine of obviousness-type double patenting over claims 1-11 of copending Application No. 10/962,557

In response to this ground of rejection, Applicants note that a Terminal Disclaimer has been filed January 3, 2007. This Terminal Disclaimer has been filed without expressing any agreement or acquiescence with the rejection of record, and has been submitted to advance the application to issue.

Accordingly, this ground of rejection should be withdrawn.

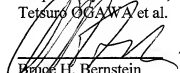
CONCLUSION

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow each of the pending claims.

Applicants therefore respectfully request that an early indication of allowance of the application be indicated by the mailing of the Notices of Allowance and Allowability.

Should the Examiner have any questions regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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